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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 762 OF 2004
IN
SUMMARY SUIT NO. 1138 OF 2004

Naman Securities and Finance Private Limited ....Plaintiff
V/s.
M/s. Vega Securities and Finance & Ors. .... Defendants

Ms. Preeti Shah for the plaintiffs
Mr. G.Mehta i/b. M/s. Shah & Sanghvi for defendants 1 and 2

CORAM:- SMT. ROSHAN DALVI, J

12th August, 2008

P.C.

The defendant is stated to be the Constituent of the plaintiffs who are sharebrokers. There are various transactions in respect of share broking between the parties pursuant to the defendant's application in non-individual client registration form made to the plaintiffs. The form is stated to be signed by defendant no. 2 as the Partner of defendant no. 1. The partnership firm of defendant no. 1 has

two partners defendants 2 and 3, both of whom have signed annexure-A to the application form which gave their personal details.

2. It is the case of the plaintiff that pursuant to the said application the defendants entered into transactions as sharebrokers for purchase and sale of securities on the Bombay Stock Exchange. The plaintiffs furnished the defendants, who are their constituents with the required stationery being contract notes, bills, debit notes, credit notes, copies of general vouchers and statement of accounts.

3. The defendants are stated to have several accounts with the plaintiff which were for the convenience of the parties. Certain four accounts, which were maintained as running accounts, came to be merged at the later date into Account No. 18281.

4. The plaintiffs have sued upon the confirmation of accounts for the year 2000-2001 which were from 1st April 2000 to 31st March, 2001. Defendants 2 and 3 as Partners of defendant no. 1 have signed the Confirmation Statement. The Suit is filed as a Summary Suit based upon the confirmation statement for recovery of the balance of Rs. 12461966/-. The confirmation statement shows the closing

balance of Rs. 12961966/- . Rs. 5 lacs as stated to have been paid after confirmation of the account and prior to filing of the Suit.

5. The Summons for Judgment is taken out against defendant no.2 upon he having entered appearance pursuant to the service of Writ of Summons on him.

6. The main defence of the defendant no. 2 is that his signature on the confirmation of the account is forged. The defendant no. 2 has sought to contend that there is a difference in the two signatures of the defendants on his application form and on the confirmation statement.

7. The application form bears the complete signature of the defendant no.2 showing him as T.H.Shah. The annexure- A to the application form is the short signature of defendant no.2. The signature on the confirmation of the account is also the short signature.

8. The Advocate for defendant no.2 argued that two signatures on the application form and Confirmation may be compared. The comparison has shown the shorter signature to annexure- A to the application form to be identical to the signature of the Confirmation Statement.

9. The Advocate for defendant no.2 argued that the Confirmation statement shows two Bank Accounts, one in Bank of India and one in
Canara Bank, none of which is the Bank Account of the defendants. The plaintiff's Advocate contended that these are the accounts of the plaintiff and have been shown by way of convenience to ascertain the entries of the transactions between the parties.

10. Defendant No. 2 has sought to contend that the account is fabricated. How it is fabricated is not mentioned. The plaintiff has shown how the account is not fabricated by producing the Accounts Statement issued by the Bankers as also the credit vouchers, pay-in-slips and the zerox copies of the cheques of defendant no.2 issued on behalf of the form of defendant no.1 as a Partner thereof with regard to entries in the accounts of the parties for the year 2000-2001. Several of these entries are shown to Court upon the Court's query and direction requiring the plaintiff to show his Bank Accounts Statement.

11. I have verified the entries shown by the plaintiffs. To cite;-

1) **an entry of Rs. 2,87,408.91** shown as debit as well as

the credit entries on 6-10-2000 as the initial cheque of defendant no.2 has been dishonoured and later honoured. The Bank statement shows the cheque no. 834210, being the cheque of the defendant. The plaintiff has produced the corresponding credit voucher, zerox copy of the cheque and pay-in-slip. The cheque shows the full signature of defendant no.2 which is identical to the one on the application form Exhibit A to the plaint. The Bank Account shows the cheque number of that cheque. The credit voucher shows the account no. 18281 which is the merged account of the defendant.

2) **An entry dated 23-10-2000 is in respect of another cheque of Rs. 4,00,000/-** similarly signed by defendant no.2 on behalf of defendant no.1. The Cheque is also dated 23-10-2000 and the credit voucher bears account no. 18281 which is the Account of the defendant no. 1.

3) **An entry of Rs. 10,00,000/-** dated 30-12-2000 in the same account statement of the plaintiff is supported by the cheque of the defendant no.2 on behalf of defendant no. 1 dated 29-12-2000 bearing no. 251802 which is reflected in the Bank Account Statement of the plaintiffs. Credit voucher is again in respect of account no. 18281 of

the defendants.

4) The plaintiff's accounts statement shows **five entries of Rs. 5,00,000/-** against the dates 7-3-2001 to 13-3-2001. That is because the cheque has been dishonoured again and again. The plaintiff has produced zerox copy of the last cheque dated 7-3-2000 signed by defendant no.2 on behalf of defendant no.1 and bearing no. 251865 which is deposited in the Canara Bank Account of plaintiffs shown in the Statement of Accounts. The five entries of Rs. 5,00,000/- between 5-3-2001 and 13-3-2001 are shown in the Canara Bank Statement. The credit voucher shows Account no. 18281 which is of the defendants.

5) The Plaintiff's Advocate has shown further entries including **the last entry which is dated 23-3-2001** for Rs. 1,50,000/- . The supporting cheque of defendant no.2, signed on behalf of firm of defendant no.1, also dated 23-3-2001 bearing no. 5283601 is produced. The Bank Accounts Statement of Bank of India shows the said entry on 23-3-2001 against cheque no. 528361. The credit voucher shows Account No. 18281 which is of the defendants' Account with the plaintiff.

12. The Plaintiff's Advocate has shown later Bank

statements of both the accounts showing that they are continued by the plaintiff till date.

13. It is seen that the defence taken up by the defendant no.2 is dishonest. He has sought to simpliciter deny his signature. His Advocate has called upon the Court to compare it with the signature on the application form Exhibit A. The comparison shows that the shorter signature is identical to the signature to annexure- A to Exhibit A. The long signature is identical to several signatures of Defendant No. 2 on cheques produced by the plaintiffs upon the Court's direction. The comparison of these signatures is easy. Each of these signatures on the cheques of the defendants is identical. It is as per the application form Annexure- A.

14. Defendant No.2 has simpliciter raised the defence that the account is fabricated. The plaintiff's exercise in obtaining his Bank statement showing the entries in the accounts statement alongwith corresponding documents show that the defence simpliciter taken by defendant no.1 is completely dishonest.

15. In fact the Advocate for the plaintiff sought to show each of the transactions mentioned in the confirmed

Statement of Accounts. It is not for the Court to verify each of the entries when the account itself is confirmed and constitutes the agreement between the parties to pay the amount as reflected in the confirmation. Nevertheless, since the plaintiff had undertaken that exercise upon the Court's direction, I have gone through the documents as aforesaid.

16. It is absolutely clear that the account maintained between the parties reflects the true state of their financial dealings. That account is signed by defendants 2 and 3 as Partners of defendant no. 1. The case of Defendant No. 2 that his signature on the Confirmation Statement is forged is seen to be false. The defence of defendant no. 2 cannot be accepted at all.

17. Advocate for defendant no.2 relied upon certain judgments to show that if defendant no.2 challenges his signature or claims that his signature or the document is fabricated, triable issue arises and the Court is bound to give the defendant unconditional leave to defend. That is an impertinent assertion. Such case has to be satisfactorily shown by the defendant. If the circumstances show prima-facie, a case of forgery, the defendant must certainly be granted leave to defend. In this case, on such a statement, simplicitor, the plaintiff has undertaken the additional

burden of proving each of the entries in the Confirmation Statement to falsify the case of defendant no. 2. In such case, no leave can be granted to the defendant to defend the suit.

18. The provisions of Order XXXVII Rule 3 of the CPC require a substantial defence to be raised. That substantial defence must stand the Court's scrutiny. It implies that simpliciter stating that the signature is forged, without more, is no defence that can be accepted as substantial defence.

19. No substantial defence is shown. Infact no defence whatsoever is seen in view of the documentary evidence produced by the plaintiff to substantiate the entries in the confirmation statement itself.

20. The plea of the Advocate for defendant no. 2 that once the signature is taken to be forged, the suit would be barred by law of limitation cannot be accepted since the bar of limitation, if any, is saved by the confirmation itself which constitutes the written contract between the parties upon which the summary Suit can lie as held in the Full Bench Judgment of this Court in para 29 in the case of **Jyotsna K. Valia V/s. T.S.Parekh & Co. (2007 (3) BCR 772)**.

21. Since no substantial defence of the defendants is at all seen and defence is sought to be raised and seen to be completely dishonest, the Summons for Judgment is made absolute as prayed. There shall be a decree accordingly.

22. Defendant No. 3 Partner of defendant no.1 has also applied in the non-individual client registration application form as a constituent of the plaintiff. Defendant No. 3 has signed the form annexure-A to the application form as well as the Confirmation Statement. He has not entered appearance and disputed the plaintiff's claim. There shall be an exparte decree against defendant no.3 also as prayed. The original documents being the Bank Accounts Statement, the credit vouchers, zerox copies of cheques and the pay-in-slips produced by the plaintiff upon the Court's direction are returned to the plaintiffs. Plaintiff's Advocate states that copies of these documents have been given to the defendant's Advocate.

(SMT. ROSHAN DALVI, J)